

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:16-CR-281-FL-1  
No. 5:18-CV-147-FL

MICHAEL ERIC TILLERY, JR., )  
                                  )  
Petitioner,                 )  
                                  )  
v.                            )  
                                  )  
UNITED STATES OF AMERICA, )  
                                  )  
                                  )  
Respondent.                 )

ORDER

This matter is before the court on petitioner's motion to vacate under 28 U.S.C. § 2255 (DE 68), and the government's motion to dismiss (DE 74). In response to the motion to dismiss, petitioner seeks to amend his motion to vacate to add a claim of ineffective assistance of counsel in failing to file an appeal. Petitioner asserts that, after sentencing, he gave a "clear and unequivocal notice to his counsel of record that he would've like to appeal," but counsel did not appeal. (Resp. (DE 77) at 3). The court construes petitioner's response as including a motion to amend his petition to add a claim of ineffective assistance of counsel in failing to file an appeal. For good cause shown, petitioner's motion to amend is GRANTED, and the government's motion to dismiss is DENIED WITHOUT PREJUDICE. Within **21 days** of the date of this order, petitioner shall file an amended motion to vacate under 28 U.S.C. § 2255, on the correct form signed under penalty of perjury, including petitioner's newly-asserted ineffective assistance of counsel claim.

SO ORDERED this the 19th day of June, 2018.

  
LOUISE W. FLANAGAN  
United States District Judge